IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.9836 OF 2004

Shri Suresh Bhairu Parit. ...Petitioner.
Vs.
The Prathamik Shikshak Sahakari Bank & Ors. ...Respondents.
....
Mr. A.V. Anturkar with Mr. S.B. Deshmukh i/b. Mrs. Vinita V. Bakre-Shastry for the Petitioner.
Mr. V. P. Malvankar, AGP for Respondent No.3 and 4.
Mr. P.S. Dani for Respondent No.2.
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CORAM : F. I. REBELLO AND
DR.D.Y.CHANDRACHUD, JJ.

February 6, 2006.

P.C. (Per Dr. D.Y. Chandrachud, J.):

The Petitioner contested an election to the Prathamik Shikshak Sahakari Bank, Kolhapur – the First Respondent - for the years 2003-04 to 2007-08; the election being to the post of Director from a constituency reserved for Other Backward Classes. The Second Respondent also contested the election, claiming to belong to the Kunbi community which is designated as an OBC. The Second Respondent was elected. The Petitioner made an application to the Caste Scrutiny Committee seeking a verification of the claim of the Second Respondent to belong to the Other Backward Classes. The Scrutiny Committee upheld the claim of

the Second Respondent of belonging to the Kunbi Community by its order dated 4th August 2004 which is now impugned in these proceedings.

2. The Scrutiny Committee had before it, a report of the Vigilance Cell dated 2nd April 2004. The Vigilance report indicates that in a document dated 28th July 1898 pertaining to an aunt of the Second Respondent on the paternal side, the entry of caste contained an endorsement of Kunbi. In a document of 30th November 1931 pertaining to the father's sister of the Second Respondent, the birth certificate contained an abbreviated word “Ku”. Similarly, the documents relating to several other relatives of the Second Respondent either contained an abbreviated reference to the community as “Ku” or “Kun”. Based on the material which was produced before it, the Committee came to the conclusion that the claim of the Second Respondent as belonging to the Kunbi community has to be upheld. Undoubtedly, in the case of certain relatives, the documentary evidence showed the entry as 'Maratha'. The Committee placed reliance on a document relating to Vithi, the aunt on the paternal side of the Second Respondent, the original whereof in Modi was produced before the Committee.

That document which, as the Vigilance report would indicate, is a document of 1898, showed a reference to the “Kunbi” community. The Committee held that there is no community called “Ku” or “Kun” and the use of the abbreviated form in several certificates of the Second Respondent's relatives would refer to the Kunbi community.

3. We have heard Learned Counsel for the parties. On behalf of the Petitioner, the attention of the Court has been drawn to a Government Resolution dated 1st June 2004 by which certain modifications were made by the State Government in the list of Other Backward Classes for the State. Existing Entry 83 on the date of the resolution reads thus:

“Kunbi (sub caste -Leva Kunbi, Leva Patil, Leva Patidar)”

As modified by the G.R. dated 1st June 2004, Entry 83 now includes “Maratha Kunbi and Kunbi Maratha”. The contention of the Petitioner is that the “Kunbi Maratha” community was brought in for the first time, by the resolution dated 1st June 2004; that the resolution has no retrospective effect and that on 29th November 2003 when the Sub Divisional Officer had given a certificate to the Second Respondent, the 'Maratha Kunbi' community was not a

part of the notified list of Other Backward Classes. This submission need not detain us and we need not go into the wider question as to whether the notification dated 1st June 2004 could have retrospective effect because, there was, in our view, sufficient material before the Scrutiny Committee to indicate that the Second Respondent does belong to the Kunbi community. As we have noted, the document of 1898 is an old document pertaining to a relative on the paternal side upon which the Committee could justifiably place reliance. The Scrutiny Committee then drew support for its decision from the documents relating to the other relatives of the Second Respondent.

4. On behalf of the Petitioner, it has next been submitted that in view of the provisions of the National Commission For Backward Classes Act, 1993, which has been enacted by Parliament, it was not open to the State Government to issue the G.R. dated 1st June 2004. The G.R. has not been challenged in the writ proceedings before us. But that apart, Section 9 of the National Commission For Backward Classes Act, 1993 defines the functions of the Commission which is constituted under Section 3 as follows :

> “9. Functions of the Commission. - (1) The Commission shall examine requests for inclusion of any class of citizens as a backward class in the lists and hear complaints of over-inclusion or under-inclusion of any backward class in such lists, and tender such advice to the Central Government as it deems appropriate.
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> -(2) The advise of the Commission shall ordinarily be binding upon the Central Government.”

The expression list is defined in Section 2(c) as follows :

> “(c) “lists” means lists prepared by the Government of India from time to time for purposes of making provision for the reservation of appointments or posts in favour of backward classes of citizens which, in the opinion of that Government, are not adequately represented in the services under the Government of India and any local or other authority within the territory of India or under the control of the Government of India.” (emphasis supplied).

Section 2(c) thus contemplates the preparation of the list for providing reservations in appointments or posts in favour of

backward classes of citizens which in the opinion of the Central Government are not adequately represented in service under the Government of India or under local or other authorities. The present case does relate to the reservation of appointments or posts in any service under the Government of India or in any local or other authority. The issue related pure and simple to an election to the Board of Directors of the First Respondent Bank. Hence, there is no merit in the submission.

5. In these circumstances, we do not find any reason to exercise our extraordinary jurisdiction under Article 226. In the circumstances of the case, the petition is dismissed.

(F. I. Rebello, J.)

(Dr.D. Y. Chandrachud, J.)